

**THIRD REVIEW OF THE WTO/SPS AGREEMENT**

China's Responses to Comments on G/SPS/W/234

Addendum

The following communication, received on 19 June 2009, is being circulated at the request of the Delegation of China.

1. China submitted a paper under the Third Review of the WTO SPS Agreement (G/SPS/W/234). China appreciates the interests showed by Members concerning further clarifying Article 8 and Annex C of the SPS Agreement, and thanks Members for providing comments to China's proposal, especially comments by Australia (G/SPS/W/238). To facilitate a full discussion on this topic in the context of the Third Review of the SPS Agreement, China would like hereby to make the following responses to the comments made.

2. For the convenience of discussion, this document first notes in italics the major comments from Members, and then gives China's response.

**Comments from Australia and other Members:**

- (a) *Codex, IPPC and OIE, which are the recognized SPS international standard-setting bodies (ISSBs) in the SPS Agreement, already have in place detailed technical and practical guidance on control, inspection and approval procedures. Besides, the ISSBs have the appropriate technical expertise. Therefore, the ISSBs, rather than the SPS Committee, should carry out discussion on relevant matters.*
- (b) *Concerning China's proposal that the SPS Committee should draw the attention of the ISSBs to the discussion and consult with them regarding the development of relevant international standards and guidelines pertaining to control, inspection and approval procedures, relevant Members comment that the ISSBs are observers of the SPS Committee and provide regular update reports to the SPS Committee, as well as provide opportunities for the SPS Committee to have input to the work of the ISSBs.*

**China's response:**

3. China also notes that Codex, IPPC and OIE have in place a series of guidelines and standards on SPS inspection, certification and control. China, as a member of all these three ISSBs, has taken part in the development of relevant guidelines and standards. One point to clarify is that China's proposal in G/SPS/W/234 is that the SPS Committee should initiate discussions on the implementation of Article 8 "Control, Inspection and Approval Procedures" and Annex C of the SPS

Agreement. China is not proposing that the SPS Committee take the place of Codex, IPPC and OIE to discuss relevant technical details and to develop standards. What China proposes is that **the SPS Committee should initiate discussions on how to effectively implement relevant provisions within the framework of the SPS Agreement.**

4. Article 8 "Control, Inspection and Approval Procedures" and Annex C are very important components of the SPS Agreement, and are closely related to the rights and obligations of each Member, both developed and developing country Members, no matter whether importing or exporting. Based on our observations as described in G/SPS/W/234, China thinks that it is necessary and worthwhile for the SPS Committee to initiate discussions on Article 8 and Annex C with the purpose of clarifying the following.

5. Besides "sampling, testing and certification" specified in Footnote 7, Annex C, and "national systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs" prescribed in Article 8, do any other procedures fall into the "control, inspection and approval procedures" as referred in Article 8 of the SPS Agreement? For example, do "control, inspection and approval procedures" include: risk assessment procedures for the market access application of a certain product; the assessment and approval of applications for pest- or disease-free areas; the assessment and approval of applications for equivalence; pre-inspection conducted in producing areas; port management measures (e.g. designating ports of entry, automatic detention, risk warning); quarantine treatment; post-entry quarantine; and market surveillance? If the answer is positive, are there any other comparatively typical procedures or measures that comprise control, inspection and approval procedures? It is therefore proposed that **the SPS Committee should clarify the scope of Article 8 and Annex C.** Through this, not only can Members better understand and implement Article 8 and Annex C, the ISSBs can also focus better on the needs of Members while developing and revising relevant international standards, therefore providing stronger technical support for the implementation of Article 8 and Annex C of the SPS Agreement.

6. Besides, the SPS Committee may find it useful, with the help of Codex, IPPC and OIE, to sort and classify existing international guidelines and standards related to Article 8 and Annex C of the SPS Agreement as applied to animal health, phytosanitary health or food safety. In case relevant parts of Article 8 and Annex C have not been reflected and specified in the corresponding international guidelines and standards, the SPS Committee should draw this to the attention of relevant international organizations in order for them to prepare a future work programme.

#### **Comments from Australia and other Members:**

- (a) *Concerning the clarification and understanding of such terms as "reasonable and necessary" in Article 1(e) and "reasonable inspection" in Article 3 of Annex C of the SPS Agreement, relevant members comment that a similar discussion was held several years ago when the Codex Guidelines for Food Import Control Systems were being amended, and the term "reasonable interval" had been clarified. Furthermore, any clarification of these terms would be best considered on a case-by-case basis. Clarification of these terms within the SPS Agreement is unlikely to be helpful or useful.*

#### **China's response:**

7. Article 8 and Annex C are important components of the SPS Agreement. To carry out discussions on ambiguous concepts and terms in clauses of the SPS Agreement through this Review can help Members better understand and more effectively implement the SPS Agreement. Therefore, clarifying terms such as "reasonable and necessary" and "reasonable inspection" can help in reaching

a unified understanding among Members, and is also helpful to keep consistency in the implementation of the SPS Agreement.

8. The understanding of "reasonable interval" as in the Decision of the Doha WTO Ministerial 2001 on "Implementation-Related Issues and Concerns" has greatly promoted the implementation of relevant articles of the SPS Agreement. International organizations like Codex also apply this understanding in relevant international standards and guidelines. Therefore, it is beneficial for the SPS Committee to start discussions from a long-term point of view. Through discussion underlying problems can be identified.

9. China appreciates this opportunity to exchange views with Members regarding the implementation of the SPS Agreement and looks forward to a full discussion.

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